

200685-0

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

In re

STEPHEN D. CRAMER,

Lawyer (Bar No. 9085).

Supreme Court No. 200,674-4

ASSOCIATION'S PETITION
FOR INTERIM SUSPENSION
(ELC 7.2(a)(2))

The Washington State Department of Revenue (DOR) revoked Respondent Stephen Cramer's law business license because of outstanding warrants for overdue taxes. Instead of ceasing operations until he paid those taxes, Cramer transferred his business assets to a new corporate entity, failed to register that entity with the DOR, and continued to operate his law business despite the revocation order. The hearing officer found that Cramer intentionally and dishonestly attempted to circumvent state law and recommended disbarment. See Appendix A. The Disciplinary Board affirmed. See Appendix B.

This petition is based on Rule 7.2(a)(2) of the Rules for Enforcement of Lawyer Conduct (ELC), which requires the Washington State Bar Association (Association) to petition this Court for an order suspending a lawyer from the practice of law during the remainder of disciplinary proceedings after the Disciplinary Board enters an order

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recommending disbarment.¹ Although Cramer currently is suspended for misconduct unrelated to this matter (In re Disciplinary Proceeding Against Cramer, 165 Wn.2d 323, 198 P.3d 485 (2008)), his suspension is due to expire in August 2009, before the likely termination of these disciplinary proceedings.

BACKGROUND

In November 2007, the Association filed a two-count formal complaint. Count 1 alleged that Cramer violated Rule 8.4(b) of the Rules of Professional Conduct (RPC) (through violation of RCW 82.32.290(1) and/or RCW 82.32.290(2)), RPC 8.4(c) and/or RPC 8.4(i) by illegally removing a posted revocation order, by operating his law business without a valid business license and/or by continuing to operate his law business after his business license had been revoked. Count 2 alleged that Cramer violated RPC 8.4(c) by attempting to circumvent state tax laws by changing the name of the business under which he practiced law. Bar File (BF) 2.

¹ ELC 7.2(a)(2) provides: "When the Board enters a decision recommending disbarment, disciplinary counsel must file a petition for the respondent's suspension during the remainder of the proceedings. The respondent must be suspended absent an affirmative showing that the respondent's continued practice of law will not be detrimental to the integrity and standing of the bar and the administration of justice, or be contrary to the public interest. If the Board's decision is not appealed and becomes final, the petition need not be filed, or if filed may be withdrawn."

On October 10, 2008, the hearing officer entered Amended Findings of Fact, Conclusions of Law and Recommendation (AFFCL). BF 85. He concluded that the Association had proved both counts as charged. AFFCL ¶¶ 85-94. He determined that the presumptive sanction for each count was disbarment under Standard 5.11(b) of the American Bar Association's Standards for Imposing Lawyer Sanctions (1991 ed. & Feb. 1992 Supp.) (ABA Standards). He found no mitigating factors and four aggravating factors (prior disciplinary offenses, bad faith obstruction of the disciplinary process by failing to appear at the January 2008 hearing, substantial experience in the practice of law and indifference to making restitution). The hearing officer recommended disbarment. AFFCL ¶¶ 97-100.

The Disciplinary Board considered the matter at its January 23, 2009 meeting. On February 2, 2009, the Board affirmed the hearing officer's decision by a vote of 9-3. The dissenting members agreed that the presumptive sanction was disbarment but would have imposed a sanction of a three-year suspension. BF 104.

NATURE OF THE MISCONDUCT WARRANTING INTERIM SUSPENSION

Cramer has been a solo practitioner since 1985. AFFCL ¶ 20. In 1995, the Department of Revenue (DOR) issued him a certificate of

registration and tax registration number for Stephen D. Cramer PLLC, a limited liability company. AFFCL ¶ 21; EX 1. Cramer was the sole owner of Stephen D. Cramer PLLC. AFFCL ¶ 22.

In 2003, Cramer stopped filing his quarterly excise tax statements and eventually stopped paying taxes altogether. By 2006, he owed approximately \$10,000 in back taxes. AFFCL ¶¶ 26-28.

The DOR tried to collect these taxes. See id. at ¶¶ 28-29. Cramer did not respond to the DOR agent's efforts to enter into a payment plan and did not appear at DOR proceedings regarding his delinquency. AFFCL ¶ 29-33, 35, TR 38-39, EX 1D. On September 13, 2006, the DOR issued and served a Preliminary Revocation Order, revoking the certificate of registration for Stephen D. Cramer PLLC based on Cramer's failure to pay excise taxes for tax years 2003-2005. AFFCL ¶¶ 36-37; EX 2.

The Preliminary Revocation Order advised Cramer that he had 21 days to request review. AFFCL ¶ 38; EX 2 at 3. Cramer did not request review. AFFCL ¶ 39. Instead, on September 22, 2006, he sent the DOR a letter stating in full, "NOTICE IS HEREBY GIVEN that Stephen D. Cramer, PLLC will cease doing business and terminate all further business operations on September 30, 2006. The limited liability company will then be dissolved through the Washington Secretary of State as soon as possible after that date." EX 8C.

Meanwhile, on September 20, 2006, Cramer obtained a certificate of incorporation for a new professional services corporation, the Law Office of Stephen D. Cramer, Inc., P.S., and obtained a new tax registration number. AFFCL ¶¶ 40, 46. He was the sole owner and officer of the corporation. AFFCL ¶ 40; TR 143-44. He incorporated his law practice under the name Law Office of Stephen D. Cramer, Inc., P.S. with a different tax identification number specifically because the DOR had revoked the certificate for Stephen D. Cramer PLLC. AFFCL ¶ 75. He explicitly transferred the assets of the limited liability company to the new corporation but did not transfer the liabilities. EX R23.

The Preliminary Revocation Order for Stephen D. Cramer PLLC became final on October 6, 2006. AFFCL ¶ 41; EX 3 (Final Revocation Order). The Final Revocation Order provided that it “be posted in a conspicuous place at the main entrance to the taxpayer’s place of business and remain posted until the Tax Warrants are paid.” AFFCL ¶ 43. The order further advised that

NOTICE: Section 82.32.290 of the Revised Code of Washington provides that it shall be unlawful for any person to engage in business after revocation of a Certificate of Registration. Persons violating this provision shall be guilty of a Class C felony. All cases will be immediately referred to the Prosecuting Attorney.

EX 3.

On October 12, 2006, a DOR agent posted the Final Revocation Order on the door to Cramer's law office. AFFCL ¶ 42. Cramer removed the Final Order of Revocation a few weeks after it was posted but did not pay the outstanding tax warrants or take any steps to enter into a payment plan with the DOR. AFFCL ¶¶ 44-45; TR 141. The hearing officer found he acted intentionally. AFFCL ¶ 76.

Between October 13, 2006 and January 8, 2007, Cramer operated the Law Office of Stephen D. Cramer, Inc., P.S., as his law business without registering with the DOR or obtaining a business license. AFFCL ¶¶ 48, 72-73. Such registration is required by law (see RCW 82.32.030) and alerts DOR that revenue may be coming in. TR 60. In operating the new corporation, Cramer kept the same law office space, office equipment, accounts receivables, and employee as when he operated his law practice as Stephen D. Cramer PLLC. AFFCL ¶ 48. The hearing officer found he acted intentionally. Id. ¶¶ 77-78.

The DOR received information that Cramer might be conducting business as an unregistered business entity. TR 56-57, 59-60. On November 22, 2006, DOR Agent Hiatt sent Cramer a letter asking whether he was conducting business in Washington under the name of Law Office of Stephen D. Cramer, Inc., P.S., and if so, to provide his registration number or submit a completed master application for a business license

and/or certificate of registration for that business. AFFCL ¶ 51; EX 8G. Cramer received Hiatt's letter but did not respond. AFFCL ¶¶ 53-54.

In January 2007, after conducting surveillance to confirm that Cramer was engaging in business without a license, Hiatt visited Cramer at his law office. AFFCL ¶¶ 55-57. He advised Cramer that the certificate of registration for his limited liability company had been revoked and showed him a copy of the Final Revocation Order. Cramer replied that he had started a new corporation and thought the Secretary of State would handle the registration of that entity with the DOR. Id. at ¶¶ 59-61. Hiatt showed Cramer a copy the November 22, 2006 letter (EX 8G), which advised him that he needed to register his new corporation with the DOR. Cramer denied having seen the letter. Id. at ¶¶ 63-64; TR 64-65. The hearing officer found that this denial was false and that Cramer's claim that he did not know that he had to obtain a certificate of registration with the DOR before he could engage in business was not credible. AFFCL ¶¶ 65- 67.

After the meeting, Hiatt sent Cramer another master license application. On January 8, 2007 Cramer submitted his application to the DOR for the Law Office of Stephen D. Cramer, Inc., P.S. AFFCL ¶¶ 70-71. The DOR subsequently determined that his new corporation was a successor to Stephen D. Cramer PLLC and transferred the tax liabilities

from the limited liability company to the new corporation. AFFCL ¶ 74; EX 14M; see RCW 82.32.140. Cramer paid his overdue taxes for both entities in early 2008, after the DOR began garnishing the bank accounts of the successor corporation. TR 123, 139; AFFCL ¶ 82.

The hearing officer found that

Respondent's continuation of his law business after the Department of Revenue had revoked the certificate of registration for Stephen D. Cramer PLLC, and his operation of the Law Office of Stephen D. Cramer, Inc., P.S., without a certificate of registration from the Department of Revenue, was calculated to circumvent the Department of Revenue and state tax laws, and involved dishonesty, deceit, and disregard for a rule of law (RCW 82.32.290).

AFFCL ¶ 79.

LEGAL ARGUMENT

ELC 7.2(a)(2) requires disciplinary counsel to petition for interim suspension following a disbarment recommendation from the Board. Under the rule, the respondent lawyer "must be suspended" unless the lawyer makes an "affirmative showing" that his or her "continued practice of law will not be detrimental to the integrity and standing of the bar and the administration of justice, or contrary to the public interest." Put differently, the rule presumes that the lawyer will be suspended after the Board recommends disbarment, and the burden is on the lawyer to present evidence sufficient to defeat that presumption. In this respect, ELC

7.2(a)(2) differs from the rules on interim suspension in other contexts. Compare ELC 7.2(a)(1) (to justify interim suspension during disciplinary proceedings, burden placed on Association to prove that the lawyer's continuing to practice will result in "substantial threat of serious harm to the public").

The presumption in favor of interim suspension after the Board recommends disbarment does not arise merely from the potential for additional similar misconduct. Rather, it recognizes that the Board recommends that a lawyer be disbarred only in cases of extremely serious misconduct, that the lawyer already has had an opportunity to be heard on appeal by the Board, and that allowing such a lawyer to continue to practice as if nothing had happened injures the integrity of the profession and is contrary to the public interest.

Here, the hearing officer and Board found that Cramer engaged in highly culpable behavior – an intentional and dishonest scheme to circumvent state law – that reflects adversely on his fitness to practice. Under ELC 7.2(a)(2), he must be suspended unless he proves that his continued practice will not be "detrimental to the integrity and standing of the bar and the administration of justice."

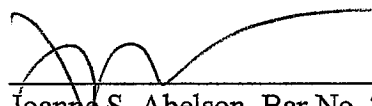
CONCLUSION

Under ELC 7.2(a)(2), the Association asks the Court to issue an Order requiring that Respondent Stephen D. Cramer appear before this Court on a date certain to show cause why this Petition should not be granted. The Association further requests that the Court issue an order on that date immediately suspending him from the practice of law.

DATED THIS 11th day of March 2009.

Respectfully submitted,

WASHINGTON STATE BAR ASSOCIATION



Joanne S. Abelson, Bar No. 24877
Senior Disciplinary Counsel
1325 4th Avenue, Suite 600
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206-727-8251

APPENDIX A

FILED

OCT 10 2008

DISCIPLINARY BOARD

BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re

Stephen D. Cramer,
Lawyer (Bar No. 9085).

Public No. 07#00056

*AMENDED FINDINGS OF FACT,
CONCLUSIONS OF LAW AND HEARING
OFFICER'S RECOMMENDATION*

In accordance with Rule 10.13 of the Rules for Enforcement of Lawyer Conduct (ELC), the undersigned Hearing Officer held the hearing on January 24, 2008 and September 11, 2008. Disciplinary Counsel Joanne Abelson and Leslie C. Allen appeared for the Washington State Bar Association (the Association). Respondent's Counsel, Leland G. Ripley appeared at the January 24, 2008 hearing. Respondent's Counsel, Stephen C. Smith, appeared at the September 11, 2008 hearing.

At the start of the January 24, 2008 hearing (9:00 a.m.), Mr. Ripley advised the Hearing Officer that the Respondent was not present. The Hearing Officer questioned Mr. Ripley about what notice he had given Respondent about the hearing. Mr. Ripley stated that he sent Respondent a copy of the November 6, 2007 Order Setting Hearing Date and Establishing

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1 Prehearing Deadlines (Scheduling Order) promptly after he was served with a copy of the
2 Order. The Scheduling Order specifically set the hearing to commence at 9:00 a.m. on January
3 24, 2008. Mr. Ripley stated that he also had forwarded Disciplinary Counsel's December 2007
4 request that Respondent sign a confidentiality waiver that would permit Washington State
5 Department of Revenue (Department of Revenue) Agents to testify about Respondent's tax
6 matters at the hearing. Respondent signed the confidentiality waivers and returned them to Mr.
7 Ripley on or after January 8, 2008. Mr. Ripley stated that on January 23, 2008, he called
8 Respondent to discuss the next day's hearing. The first time Mr. Ripley called the Respondent,
9 the phone was busy. The second time Mr. Ripley called the Respondent, he left a voice mail
10 message asking Respondent to meet him at the Association's offices at 8:30 a.m. on January 24,
11 2008. Mr. Ripley stated that as of the start of the hearing, Respondent had not returned Mr.
12 Ripley's telephone message nor had he met Mr. Ripley at the appointed time. Finally, the
13 Hearing Officer asked Mr. Ripley: "Are you satisfied that you made sufficient effort to notify
14 your client of today's hearing?" Mr. Ripley replied, "Yes."

15 After the close of the Association's case, Mr. Ripley moved to withdraw as counsel for
16 the Respondent. The Hearing Officer granted Mr. Ripley's motion to withdraw, and amended
17 the Scheduling Order to permit Respondent seven additional calendar days after the Association
18 files its Proposed Findings of Fact, Conclusions of Law and Recommendation (FFCL) within
19 which to submit his own proposed FFCL.

20 On January 28, 2008, the Hearing Officer received a letter from Mr. Ripley with an
21 attached letter from Respondent. Respondent's attached letter dated January 24, 2008 stated
22 that he had "received no prior notice of this morning's events from any source." On January 27,
23 2008, the Hearing Officer received a faxed letter from Respondent referencing his January 24th

1 letter and requesting the Hearing Officer's "forbearance on any further action until new counsel
2 appears on [Respondent's] behalf." On February 4, 2008, the Hearing Officer received a faxed
3 letter from Respondent in which he stated that he had made an appointment with attorney [T.F.].
4 Respondent's letter also requested (1) a stay of proceedings until new counsel appeared and (2)
5 a teleconference with the Hearing Officer and Disciplinary Counsel to "discuss the current
6 issues."

7 By letter dated and received by the Hearing Officer via fax on February 11, 2008,
8 Disciplinary Counsel agreed to a two-week extension during which Respondent could "present
9 proposed Findings or make any motion he feels is appropriate." Later on February 11th, the
10 Hearing Officer faxed a letter to both parties "ordering that Respondent has until 4:30 p.m. on
11 February 25, 2008 to present his proposed Findings, Conclusions and Recommendations and/or
12 bring before me any appropriate motions."

13 On Friday, February 22, 2008, Respondent faxed to the Hearing Officer his "Motion for
14 Order Re-Opening Hearing and Extending Deadline for filing Findings of Fact and Conclusions
15 of Law. . . ." Later on February 22, 2008, the Hearing Officer faxed a letter to both parties
16 ordering Disciplinary Counsel to submit its response by 4:30 p.m. on Friday, March 7, 2008.
17 The additional time to respond was granted because Disciplinary Counsel had previously
18 notified Respondent and the Hearing Officer that she would be out of her office until March 4,
19 2008.

20 On March 6, 2008, the Hearing Officer received via fax the parties' signed "Stipulation
21 to Re-Open Hearing to Permit Respondent to Testify" and "Order." On Friday, March 7, 2008,
22 the Hearing Officer signed and faxed to the parties their agreed-upon Order approving the
23 Stipulation and requiring the parties to "coordinate with my secretary . . . to schedule a
24

1 | teleconference for the week of March 10, 2008 to select a date to take Respondent's testimony."
2 | Later on March 7, 2008, the Hearing Officer's secretary telephoned both parties and left
3 | voicemails in an attempt to facilitate the scheduling of the agreed-upon and ordered scheduling
4 | teleconference. Disciplinary Counsel responded later that afternoon and informed the Hearing
5 | Officer's secretary that she was available for the teleconference any time during the week of
6 | March 10, 2008 except for two specific hours. Respondent returned the voicemail later that
7 | same afternoon of March 7, 2008 and informed the Hearing Officer's secretary that he was
8 | hiring attorney [T.F.] and his attorney would call back to schedule the teleconference.

9 | On Monday, March 10, 2008, the Hearing Officer's secretary left another voicemail at
10 | Respondent's office phone number in which she notified Respondent that she had not received
11 | any additional contact from Respondent or anyone representing him. The week of March 10,
12 | 2008 passed with no contact from Respondent or anyone on his behalf.

13 | By letter faxed on Monday, March 17, 2008, the Hearing Officer notified the parties that
14 | because Respondent had failed to comply with his signed Stipulation and the Hearing Officer's
15 | Order, the Order had lapsed by its own terms. Further, the Hearing Officer ordered that the
16 | hearing of this matter was closed and that Respondent had forfeited his right to testify therein.
17 | Finally, the Order granted Respondent another extension of time for the purpose of submitting
18 | his proposed FFCL on or before March 27, 2008.

19 | On March 19, 2008, the Hearing Officer received an email from a new attorney, Stephen
20 | Smith. This email stated: "We have today been retained to represent [Respondent] in the
21 | referenced action. We will be filing a formal notice of appearance ASAP. Additionally, we
22 | will file a Motion for Reconsideration of your Letter/Order of March 17, 2008 in order to allow
23 | [Respondent's] testimony to be taken in this matter." As of Monday, March 31, 2008, no notice

1 of appearance has been served on the Hearing Officer by any attorney on Respondent's behalf,
2 nor did Respondent file proposed FFCL by the March 27, 2008 deadline. Thus, on March 31,
3 2008, the Hearing Officer entered Findings, Conclusions and a Recommendation that
4 Respondent be disbarred.

5 Respondent did not seek reconsideration of the Hearing Officer's decision, as allowed
6 under ELC 10.16(c). Instead, on April 14, 2008, Respondent filed a petition asking the
7 Disciplinary Board to set aside the Findings, Conclusions and Recommendations. On May 2,
8 2008, the Chair of the Disciplinary Board denied Respondent's petition, but suggested "that the
9 parties consider stipulating to some procedure that would allow the full Board to receive the
10 Respondent's testimony in this matter so that any review will be based on a complete record."

11 On June 4, 2008, Respondent filed a motion to reopen the hearing to permit Respondent
12 to testify. The Association advised that it would not object should the Hearing Officer choose
13 to reopen the hearing to take Respondent's testimony. On July 8, 2008, the Hearing Officer
14 entered an order reopening the hearing and setting a hearing date for July 31, 2008. On July 29,
15 2008, upon agreement of counsel, the Hearing Officer rescheduled the July 31, 2008 hearing to
16 August 28, 2008. On August 1, 2008, Respondent's Counsel was served with a copy of the
17 order resetting the hearing date to August 28, 2008 at 9:30 a.m.

18 Neither Respondent nor his counsel were present when the August 28, 2008 hearing
19 commenced at 9:30 a.m. At 10:00 a.m., the Hearing Officer asked Disciplinary Counsel to
20 check their voice mails and emails to determine if Respondent's Counsel had left any messages
21 and if not, to call him. Disciplinary Counsel reported back to the Hearing Officer that neither of
22 them had received a voice mail or email from Respondent's Counsel. Disciplinary Counsel
23 advised that she had left Respondent's Counsel a voice mail message on his office telephone

1 and on his cell phone. During Disciplinary Counsel's report back to the Hearing Officer, she
2 received notice that Respondent's Counsel had returned her call and left a number to reach him
3 at his cell phone. The hearing went off the record while Disciplinary Counsel called
4 Respondent's Counsel in the presence of the Hearing Officer.

5 Respondent's Counsel advised that he had miscalendared the hearing and confused it
6 with another Supreme Court matter involving Respondent. The Hearing Officer instructed
7 Respondent's Counsel to work with Disciplinary Counsel as soon as possible to set another
8 hearing date. The parties agreed on a hearing date of September 11, 2008 at 1:30 p.m.

9 The hearing was reopened at 1:30 p.m. on September 11, 2008 at the offices of the
10 Washington State Bar Association. At the hearing, Respondent and his counsel appeared.
11 Respondent testified and exhibits were admitted into evidence.

12 FORMAL COMPLAINT FILED BY DISCIPLINARY COUNSEL

13 The Formal Complaint filed by Disciplinary Counsel charged Mr. Cramer with the
14 following counts of misconduct:

15 Count I - By removing the Department of Revenue's posted order revoking Stephen D.
16 Cramer LLC's and/or Stephen D. Cramer PLLC's certificate of registration, by operating the
17 Law Office of Stephen D. Cramer, Inc., P.S. without a valid Department of Revenue business
18 license and/or certificate of registration, and/or by continuing to operate his law business after
19 the Department of Revenue had revoked the certificate of registration for Stephen D. Cramer
20 LLC, Respondent violated RPC 8.4(b) (by violating RCW 82.32.290(1) and/or RCW
21 82.32.290(2)), RPC 8.4(c), and/or RPC 8.4(i).

22 Count II - By attempting to circumvent the Department of Revenue's tax law
23 requirements by changing the name of the business under which Respondent practiced law,

1 Respondent violated RPC 8.4(c).

2 Based on the pleadings in the case, and the testimony and exhibits at the January 24,
3 2008 and September 11, 2008 hearings, the Hearing Officer makes the following:

4 FINDINGS OF FACT

5 1. Respondent was admitted to the practice of law in the State of Washington on May
6 22, 1979.

7 PROCEDURAL FINDINGS

8 2. On or about September 17, 2007, Respondent received the Association's Formal
9 Complaint.

10 3. On September 19, 2007, Respondent filed his Acknowledgment of Service of the
11 Formal Complaint.

12 4. On October 1, 2007, Leland G. Ripley, filed his notice of appearance as
13 Respondent's Counsel.

14 5. On November 6, 2007, the Hearing Officer conducted a telephonic hearing to set
15 the case schedule. Mr. Ripley and Disciplinary Counsel Leslie Allen were present at the
16 telephonic hearing.

17 6. November 6, 2007, Respondent filed his Answer to the Formal Complaint.

18 7. On November 9, 2007, the Hearing Officer filed the Scheduling Order.

19 8. The Scheduling Order set the disciplinary hearing for January 24, 2008.

20 9. On November 9, 2007, Becky Crowley, Clerk to the Disciplinary Board, served
21 Respondent's Counsel and Disciplinary Counsel with a copy of the Scheduling Order.

22 10. Respondent received adequate notice of the date of the disciplinary hearing.

23 11. Respondent did not appear at the January 24, 2008 disciplinary hearing.

1 12. Respondent denies that his counsel, Leland Ripley, gave him notice of the January
2 24, 2008 hearing date.

3 13. Respondent's testimony is not credible.

4 14. Neither Respondent nor any representative of Respondent scheduled a time for the
5 taking of his testimony during the week of March 10, 2008 as required by the Hearing
6 Officer's Order of March 7, 2008.

7 15. The hearing was reopened and rescheduled for August 28, 2008.

8 16. Neither Respondent nor his counsel appeared at the August 28, 2008 disciplinary
9 hearing.

10 17. Respondent denies that his counsel, Stephen C. Smith, gave him notice of the
11 August 28, 2008 hearing date.

12 18. The hearing, rescheduled for September 11, 2008, commenced at 1:30 p m.

13 19. Both Respondent and his counsel were present for the September 11, 2008 hearing.

14 FINDINGS REGARDING UNDERLYING GRIEVANCE

15 20. Respondent has engaged in a solo law practice since 1985.

16 21. On or before 1995, Respondent began to operate his law practice as a limited
17 liability company, under the name of Stephen D. Cramer PLLC.

18 22. Respondent was the sole owner of Stephen D. Cramer PLLC.

19 23. Between 1996 and the relevant time period (January 8, 2007), Respondent
20 occupied the same law offices and employed the same employee (Angie Blanco).

21 24. On July 1, 2005, the Department of Revenue issued Stephen D. Cramer PLLC a
22 master license and certificate of registration using UBI No. 601 641 084.

23 25. In communications with the Department of Revenue regarding his law business
24

1 registered under UBI No. 601 641 084, Respondent used "Stephen D. Cramer LLC"
2 interchangeably with "Stephen D. Cramer PLLC." (Hereafter, references to "Stephen D.
3 Cramer LLC" also include references to "Stephen D. Cramer PLLC," and vice versa.)

4 26. Respondent ceased filing his quarterly excise tax statements with the Department
5 of Revenue starting in 2003.

6 27. By 2006, Respondent was in significant arrears in paying his business and
7 occupation taxes (excise taxes) to the Department of Revenue.

8 28. As a result, the Department of Revenue filed three tax warrants, totaling \$9,963.39,
9 with the King County Superior Court Clerk's office on May 24, 2004, April 12, 2005, and
10 May 10, 2006. These tax warrants covered the tax years 2003 - 2005.

11 29. On or about April 26, 2006, the Department of Revenue Agent Felicia Jones
12 advised Respondent that she had scheduled a "prehearing" for May 8, 2006, during which she
13 would meet with Respondent and discuss how Respondent could arrange to pay his tax
14 deficiencies and file delinquent excise tax statements.

15 30. Respondent did not appear at the May 8, 2006 Department of Revenue
16 "prehearing."

17 31. Respondent was aware of the "prehearing," but chose not to appear at that hearing.

18 32. Thereafter, Ms. Jones left several voice mail messages at Respondent's place of
19 business asking that he return her call. Respondent did not return Ms. Jones' telephone calls.

20 33. On or about August 10, 2006, Ms. Jones sent Respondent a notice that the
21 Department of Revenue, Compliance Division, would hold a hearing on September 13, 2006
22 to determine whether to revoke his law business's certificate of registration based on the
23 outstanding tax warrants and Respondent's failure to demonstrate that he would be able to pay

1 his past and future tax obligations.

2 34. Felicia Jones appeared at the compliance hearing on the Department of Revenue's
3 behalf and submitted an Affidavit to support the Department of Revenue's revocation request.

4 35. Respondent was aware of the September 13, 2006 hearing, but chose not to appear
5 at that hearing.

6 36. On September 13, 2006, the Department of Revenue Compliance Division
7 Presiding Officer, Eric Overson, entered Findings of Fact, Conclusions of Law, and an Order
8 (Preliminary Revocation Order) revoking Stephen D. Cramer, LLC's certificate of
9 registration, based on Respondent's failure to pay excise taxes for tax years 2003 through
10 2005.

11 37. The Department of Revenue mailed Respondent a copy of the September 13, 2006
12 Preliminary Revocation Order the same day.

13 38. The Preliminary Revocation Order stated that Respondent had 21 days to request a
14 review of the Order.

15 39. Respondent did not request review of the Preliminary Revocation Order.

16 40. On September 20, 2006, Respondent obtained a Certificate of Incorporation for the
17 Law Office of Stephen D. Cramer, Inc., P.S. from the Washington State Secretary of State's
18 office. He is the sole owner of the Law Office of Stephen D. Cramer, Inc., P.S.

19 41. On October 6, 2006, the Washington State Department of Revenue Regional
20 Compliance Manager signed the final Order Revoking the certificate of registration (Final
21 Revocation Order) for Respondent's law business, Stephen D. Cramer LLC.

22 42. On October 12, 2006, Ms. Jones posted the Final Revocation Order on the main
23 entrance to Respondent's interior law office rather than the main entrance to the building that

1 Respondent shares with other independent attorneys.

2 43. The Final Revocation Order stated that the order "be posted in a conspicuous place
3 at the main entrance to the taxpayer's place of business and remain posted until the Tax
4 Warrants are paid." It further stated

5 NOTICE: Section 82.32.290 of the Revised Code of Washington provides
6 that it shall be unlawful for any person to engage in business after revocation of
7 a certificate of registration. Persons violating this provision shall be guilty of a
8 Class C felony. All cases will be immediately referred to the Prosecuting
9 Attorney.

10 44. Respondent did not pay the tax warrants for Stephen D. Cramer PLLC, nor did he
11 take steps to enter into any payment plan with the Department of Revenue.

12 45. A few weeks later, Respondent removed the posted Final Order of Revocation
13 from the door to his law office.

14 46. On September 20, 2006, Respondent obtained a certificate of incorporation for a
15 new corporation, the "Law Office of Stephen D. Cramer, Inc., P.S." At the same time, the
16 State of Washington assigned this new corporation UBI No. 602-651-764.

17 47. The Law Office of Stephen D. Cramer, Inc., P.S., is the successor of Stephen D.
18 Cramer, PLLC.

19 48. Between October 13, 2006 and January 8, 2007, Respondent operated the Law
20 Office of Stephen D. Cramer, Inc., P.S., as his law business without any disruption in services
21 to his clients. He kept the same law office space, office equipment, accounts receivables, and
22 employee as when he operated his law practice as Stephen D. Cramer PLLC.

23 49. Despite having received a master license and certificate of registration for Stephen
24 D. Cramer PLLC just 15 months before, Respondent did not apply for a certificate of
registration or obtain a business license from the Department of Revenue before engaging in

1 business as the Law Office of Stephen D. Cramer, Inc., P.S.

2 50. On November 21, 2006, the Association wrote Respondent a letter asking him to
3 respond to allegations that he continued to engage in business after his certificate of
4 registration was revoked by the Department of Revenue, a violation of RCW 82.32.290.

5 51. On November 22, 2006, Department of Revenue Agent, Stephen Hiatt, sent
6 Respondent a letter asking whether he was conducting business in Washington under the
7 name of Law Office of Stephen D. Cramer, Inc., P.S., and if so, to submit a completed Master
8 Application for a business license and/or certificate of registration for the Law Office of
9 Stephen D. Cramer, Inc., P.S.

10 52. Respondent attached Mr. Hiatt's November 22, 2006 letter to, and specifically
11 identified it in, his December 1, 2006 correspondence to the Association.

12 53. The copy of the November 22, 2006 Hiatt letter that Respondent gave to the
13 Association contained Respondent's copy-received stamp indicating that Respondent received
14 Mr. Hiatt's letter on December 1, 2006.

15 54. Respondent did not respond to Mr. Hiatt's November 22, 2006 letter.

16 55. On December 21, 2006, Mr. Hiatt conducted a surveillance of Respondent's law
17 offices to determine if he was continuing to engage in business despite having no certificate of
18 registration.

19 56. Mr. Hiatt's surveillance disclosed that Respondent's law offices were still open
20 and that a motor vehicle registered to Respondent was parked near Respondent's law office
21 sign.

22 57. On January 4, 2007, Mr. Hiatt and Department of Revenue Special Agent Fulton
23 went to Respondent's law office and asked to meet with him.

1 58. Respondent asked the Department of Revenue Agents to step outside the office
2 building to discuss their business with him.

3 59. The Department of Revenue Agents advised Respondent that his PLLC's
4 certificate of registration had been revoked and showed him a copy of the Final Revocation
5 Order.

6 60. Respondent told them that he had started a new corporation that he had registered
7 with the Secretary of State's Office.

8 61. The Department of Revenue Agents told Respondent that he needed also to register
9 his new corporation with the Department of Revenue.

10 62. Respondent replied that he thought that the Secretary of State's office would take
11 care of his Department of Revenue registration.

12 63. Mr. Hiatt showed Respondent a copy of the letter that he had sent him on
13 November 22, 2006 informing him that Respondent needed to register his new corporation
14 with the Department of Revenue.

15 64. Respondent told Mr. Hiatt that he had not seen Mr. Hiatt's November 22, 2006
16 letter.

17 65. This statement was false. Respondent had received the Mr. Hiatt's November 22,
18 2006 letter, it was in his files, and he had previously provided a copy of the letter to the Bar
19 Association. Respondent's explanation that he had not realized he had received Mr. Hiatt's
20 November 22, 2006 letter is not credible.

21 66. Respondent denied knowing that he had to obtain a certificate of registration with
22 the Department of Revenue before he could engage in business in the state of Washington.

23 67. Respondent's claim that he did not know that he had to obtain a certificate of
24

1 registration with the Department of Revenue before he could engage in business in the state of
2 Washington is not credible.

3 68. Respondent testified at the hearing that he did not conceal his activities from the
4 Department of Revenue and that he gave notice to the Department of Revenue that he was
5 continuing to operate as the Law Office of Stephen D. Cramer, Inc., P.S.

6 69. Respondent's testimony that he had notified the Department of Revenue that he
7 was continuing to operate as the Law Office of Stephen D. Cramer, Inc., P.S., is not credible.

8 70. On January 5, 2007, Mr. Hiatt sent Respondent another letter, identical to his
9 November 22, 2006 letter, enclosing another Master License application.

10 71. On January 8, 2007, Respondent submitted a Master Application to the
11 Department of Revenue for the Law Office of Stephen D. Cramer, Inc., P.S.

12 72. Respondent's January 8, 2007 Master Application admitted that he had been
13 operating the business of Law Office of Stephen D. Cramer, Inc., P.S. since October 13, 2006.

14 73. Between October 13, 2006 and January 8, 2007, Respondent engaged in business
15 without a business license and without a certificate of registration from the Department of
16 Revenue.

17 74. By letter dated January 11, 2007, the Department of Revenue advised Respondent
18 that it had determined his new corporation was a successor to "Stephen D. Cramer LLC tax
19 reporting number 601 641 094."

20 75. On January 30, 2007, Respondent testified in another matter that he had
21 incorporated his law practice under the name "Law Office of Stephen D. Cramer, Inc., P.S.",
22 using a different tax identification number, specifically because the Department of Revenue
23 had revoked the certificate of authority for his business "Stephen D. Cramer PLLC."

1 76. Respondent intentionally removed the Final Revocation Order that the Department
2 of Revenue had posted on his office door without first paying or attempting to make any
3 payments on the tax warrants underlying the Final Revocation Order.

4 77. Respondent intentionally engaged in his law business after his certificate of
5 registration for Stephen D. Cramer PLLC had been revoked by the Department of Revenue.

6 78. Respondent intentionally engaged in his law business, Law Office of Stephen D.
7 Cramer, Inc., P.S., without first obtaining a certificate of registration with the Department of
8 Revenue.

9 79. Respondent's continuation of his law business after the Department of Revenue
10 had revoked the certificate of registration for Stephen D. Cramer PLLC, and his operation of the
11 Law Office of Stephen D. Cramer, Inc., P.S., without a certificate of registration from the
12 Department of Revenue, was calculated to circumvent the Department of Revenue and state tax
13 laws, and involved dishonesty, deceit, and disregard for a rule of law (RCW 82.32.290).

14 80. The public and the legal system were injured by Respondent's conduct in placing
15 himself above the state tax laws. The Department of Revenue was injured by the efforts its
16 Agents expended having to track Respondent down to ensure that he operated his law business
17 with a certificate of registration from the Department of Revenue, and by the efforts its Agents
18 have taken to collect on the overdue excise taxes.

19 81. Respondent failed to appear at the January 24, 2008 disciplinary hearing, despite
20 being notified by his counsel of the date of the hearing, in violation of ELC 10.13(b).

21 82. In 2008, Respondent paid the Department of Revenue the balance of overdue taxes
22 owed by Stephen D. Cramer PLLC and overdue taxes owed by the Law Office of Stephen D.
23 Cramer, P.S., Inc. As of the September 11, 2008 hearing date, Respondent was current on his

1 filing and payment of excise taxes to the Department of Revenue.

2 CONCLUSIONS OF LAW

3 Violations Analysis

4 83. The Washington State Bar Association (the Association) bears the burden of
5 proving each count of the Formal Complaint by a "clear preponderance of the evidence." ELC
6 10.14(b); In re Disciplinary Proceeding Against Allotta, 109 Wn.2d 787, 792, 748 P.2d 628
7 (1988).

8 84. The "clear preponderance standard is applicable to [lawyer] misconduct amounting
9 to a felony or misdemeanor, for which an attorney is subject to discipline even in the absence of
10 a criminal conviction." In re Disciplinary Proceeding Against Huddleston, 137 Wn.2d 560, 570
11 n.6, 974 P.2d 325 (1999)

12 85. The Association proved Count 1 by a clear preponderance of the evidence as
13 follows:

14 86. RCW 82.32.290(1) provides the following:

15 (1)(a) It shall be unlawful:

16 (i) For any person to engage in business without having obtained a
17 certificate of registration as provided in this chapter;

18 (ii) For the president...or other officer of any company to cause or permit
19 the company to engage in business without having obtained a certificate
20 of registration as provided in this chapter;

21 (iii) For any person to tear down or remove any order or notice posted by
22 the department [of Revenue];

23 (1)(b) Any person violating any of the provision of this subsection (1) shall
24 be guilty of a gross misdemeanor in accordance with chapters 9A.20 RCW.

87. The Association has proved by a clear preponderance of the evidence that
Respondent violated RCW 82.32.290(1)(a)(i) and (ii) by engaging in his "Law Office of

1 Stephen D. Cramer, Inc., P.S.," law business without first having obtained a Department of
2 Revenue certificate of registration.

3 88. The Association has proved by a clear preponderance of the evidence that
4 Respondent removed the Final Revocation Order posted on his door without authority, in
5 violation of RCW 82.32.290(1)(a)(iii).

6 89. Respondent's violation of RCW 82.32.290(1) involved the commission of gross
7 misdemeanors. See RCW 82.32.290(1)(b).

8 90. RCW 82.32.290(2)(a) provides:

9 (2)(a) It shall be unlawful:

10 (i) For any person to engage in business after revocation of a certificate of
11 registration;

12 2(b) Any person violating any provision of this subsection (2) shall be guilty
13 of a class C felony in accordance with chapter 9A.20 RCW.

14 91. The Association has proved by a clear preponderance of the evidence that
15 Respondent violated RCW 82.32.290(2)(a) by continuing to engage in his law business after
16 October 6, 2006, when the Final Revocation Order was entered revoking Stephen D. Cramer
17 LLC's certificate of registration.

18 92. Respondent's violation of RCW 82.32.290(2)(a) involved the commission of a
19 class C felony. See RCW 82.32.290(2)(b).

20 93. By committing the gross misdemeanors and class C felony described above,
21 Respondent violated RPC 8.4(b), RPC 8.4(c), and RPC 8.4(i).

22 94. The Association proved Count 2 by a clear preponderance of the evidence. By
23 intentionally attempting to circumvent the Department of Revenue's Final Revocation Order by
24 changing the name of the business under which he practiced law and continuing to practice

1 without a certificate of registration, Respondent acted dishonestly and deceitfully, in violation
2 of RPC 8.4(c).

3 Sanction Analysis

4 95. A presumptive sanction must be determined for each ethical violation. In re
5 Anschell, 149 Wn.2d 484, 69 P.2d 844, 852 (2003). The following standards of the American
6 Bar Association's Standards for Imposing Lawyer Sanctions ("ABA Standards") (1991 ed. &
7 Feb. 1992 Supp.) are presumptively applicable in this case:

8 ABA Standards 5.1 applies to all of Respondent's misconduct (Count 1—violation of
9 RPC 8.4(b), 8.4(c), and 8.4(i) and Count 2—violation of RPC 8.4(c)). ABA Standards 5.1
10 provides:

11 **5.1 Failure to Maintain Personal Integrity**

12 5.11 Disbarment is generally appropriate when:

13 (a) a lawyer engages in serious criminal conduct, a necessary element
14 of which includes intentional interference with the administration
15 of justice, false swearing, misrepresentation, fraud, extortion,
misappropriation, or theft; or the sale, distribution or importation
of controlled substances; or the intentional killing of another; or an
attempt or conspiracy or solicitation of another to commit any of
these offenses; or

16 (b) a lawyer engages in any other intentional conduct involving
dishonesty, fraud, deceit, or misrepresentation that seriously
adversely reflects on the lawyer's fitness to practice.

17 5.12 Suspension is generally appropriate when a lawyer knowingly engages in
18 criminal conduct which does not contain the elements listed in Standard
5.11 and that seriously adversely reflects on the lawyer's fitness to
practice.

19 5.13 Reprimand is generally appropriate when a lawyer knowingly engages in
20 any other conduct that involves dishonesty, fraud, deceit, or
misrepresentation and that adversely reflects on the lawyer's fitness to
practice law.

21 5.14 Admonition is generally appropriate when a lawyer engages in any other conduct
22 that reflects adversely on the lawyer's fitness to practice law.

23 (Emphasis added.)

24 96. When multiple ethical violations are found, the "ultimate sanction imposed should

1 at least be consistent with the sanction for the most serious instance of misconduct among a
2 number of violations." In re Disciplinary Proceeding Against Petersen, 120 Wn.2d 833, 854,
3 846 P.2d 1330 (1993).

4 97. Based on the Findings of Fact and Conclusions of Law and application of the ABA
5 Standards, the presumptive sanction for Respondent's intentional and dishonest acts is
6 disbarment for Count 1 and disbarment for Count 2 pursuant to ABA Standard 5.11(b).

7 98. I find that the following aggravating factors, as set forth in Section 9.22 of the
8 ABA Standards, apply in this case:

9 (a) prior disciplinary offenses:

- 10 • In 1991, Respondent stipulated to a Reprimand for failure to disclose
material facts to a tribunal, failure to promptly file a creditor's claim,
and failure to obtain written waivers of conflicts of interests;
- 11 • In 1994, Respondent received two Censures for failing to supervise
and act with reasonable diligence, and for disbursing client trust funds
12 to himself contrary to the terms of the written fee agreement;
- 13 • In 2007, a hearing officer and the Disciplinary Board recommended
that Respondent be suspended for eight months for misusing client
trust funds in violation of RPC 8.4(c) and 1.14(a), and that he also
14 receive a reprimand for misrepresenting to Disciplinary Counsel that
he had deposited the client's advance fees into his trust account when
15 he actually had deposited them into his operating account, in violation
of RPC 8.4(c), RPC 8.4(d), RPC 8.4(l) and ELC 5.3(c). Respondent's
16 appeal of the suspension and reprimand recommendations is currently
before the Supreme Court;

17 (e) bad faith obstruction of the disciplinary proceeding by intentionally failing
to comply with rules or orders of the disciplinary agency [Respondent
18 failed to appear at the January 24, 2008 hearing as required under ELC
10.13(b)];

19 (i) substantial experience in the practice of law [Respondent has practiced law
since 1976]; and

20 (j) indifference to making restitution [respondent did not pay off the tax
warrants or take any steps to enter into a payment plan with the Department
21 of Revenue until after the January 24, 2008 hearing].

22 99. The record reflects no ABA Standards § 9.32 mitigating factors.

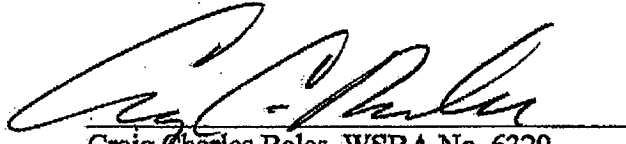
23 100. Because I find no mitigating factors under Section 9.32 of the ABA Standards

1 and several aggravating factors under Section 9.22, I find no reason to depart from the
2 presumptive sanction of disbarment for each count.

3 RECOMMENDATION

4 101. Based on the ABA Standards, the number of aggravating factors, and the lack of
5 any mitigating factor, the Hearing Officer recommends that Respondent Stephen D. Cramer be
6 disbarred.

7 Dated this 9th day of October, 2008.

8 
9 Craig Charles Beles, WSBA No. 6329
10 Hearing Officer
11

12
13 CERTIFICATE OF SERVICE

14 I certify that I caused a copy of the Amended Findings...
15 to be delivered to the Office of Disciplinary Counsel and to be mailed
16 to Stephen C. Smith, Respondent/Respondent's Counsel
17 at 877 Main St, Suite 1000, Port Angeles, WA 98125, by Certified first class mail,
18 postage prepaid on the 10th day of October, 2008

19 Julie Anne Shankles
20 Clerk/Counsel to the Disciplinary Board
21
22
23
24

APPENDIX B

1
2
3 BEFORE THE
4 DISCIPLINARY BOARD
5 OF THE
6 WASHINGTON STATE BAR ASSOCIATION

FILED

FEB 02 2009

RECEIVED

7 In re

8 STEPHEN D. CRAMER

9 Lawyer (WSBA No.9085)

Proceeding No. 07#00056

DISCIPLINARY BOARD ORDER
ADOPTING HEARING OFFICER'S
DECISION

10
11 This matter came before the Disciplinary Board at its January 23, 2009 meeting, on
12 automatic review of Hearing Officer Craig C. Beles' decision recommending disbarment
13 following a hearing.

14 Having heard oral argument and reviewed the materials submitted by the parties and the
15 applicable case law and rules,

16 **IT IS HEREBY ORDERED THAT** the Hearing Officer's decision is adopted¹;

17
18
19
20 ¹ The vote on this matter was 9-3. Those voting in the majority were: Anderson, Bahn, Barnes, Cena, Coppinger-
Carter, Fine, Handmacher, Hazelton and Meehan.

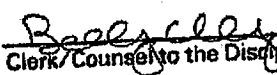
21 Those voting in the minority were: Carlson, Greenwich and Urcia. Those voting in the minority agree with the
22 Hearing Officer that the *ABA Standards* lead to disbarment as the appropriate sanction in this case. However, the
23 minority believes that this sanction is overly harsh. By imposing the ultimate sanction on Mr. Cramer, when he did
24 pay back the taxes, it is not possible to treat Mr. Cramer differently than a lawyer who failed to pay the taxes. In
this instance, those voting in the minority believe that a three-year suspension would be a more appropriate
sanction.

1 Dated this 30th day of January, 2009.

2
3 
4 William J. Carlson, Chair
5 Disciplinary Board
6
7
8

9 CERTIFICATE OF SERVICE

10 I certify that I caused a copy of the Board order
11 to be delivered to the Office of Disciplinary Counsel and to be mailed
12 to Stephen C. Smith, Respondent/Respondent's Counsel
13 at 877 Main St. SE 1000, Box 11 by Certified/first class mail,
14 postage prepaid on the 3 day of February, 2009.

15 
16 Clerk/Counsel to the Disciplinary Board
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